



2008-037

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

January 4, 2008

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Melvyn W. Salter  
Judge of Probate  
Cherokee County Administrative Center  
260 Cedar Bluff Road, Suite 101  
Centre, Alabama 35960

Probate Judges – Crimes and Offenses –  
Estates – Administrators and Executors

Infamous crimes under Alabama law for purposes of section 43-2-22 have been defined by the courts of this state to specifically include convictions of treason, conspiracy, embezzlement of the public money, bribery, perjury, and voting fraud, as well as all other felony convictions.

Dear Judge Salter:

This opinion of the Attorney General is issued in response to your request.

QUESTION

What is an "infamous" crime under section 43-2-22 of the Code of Alabama?

FACTS AND ANALYSIS

As your letter to this Office states, section 43-2-22 of the Code requires that "[n]o person must be deemed a fit person to serve as executor who is under the age of 19 years, or who has been convicted of an infamous crime, or who, from intemperance, improvidence or want of understanding, is incompetent to discharge the duties of the trust." ALA. CODE § 43-2-22 (1991). The probate court has the discretion to determine the existence of causes of disability to serve as executor under section 43-2-22(a). *Owens v. Ford*, 451 So. 2d 796, 798 (Ala. 1984) (citing *Kidd v. Bates*, 120 Ala. 79, 23 So. 735 (1898)). Section 43-2-22, however, does not define the term "infamous" for purposes of determining the fitness of an executor.

The United States Constitution states that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . .” U.S. CONST. amend. V. Black’s Law Dictionary gives examples of “infamous crimes” at general common law such as “perjury, treason, and fraud.” BLACK’S LAW DICTIONARY 400 (8<sup>th</sup> ed. 2004). In addition, *Black’s* states as follows:

At common law an infamous crime was one . . . inconsistent with the common principles of honesty and humanity. Infamous crimes were treason, felony, all offenses found in fraud and which came within the general notion of the *crimen falsi* of the civil law, piracy, swindling, cheating, barratry, and the bribing of a witness to absent himself from a trial, in order to get rid of his evidence.

*Id.*, citing Justin Miller, *Handbook of Criminal Law* § 8, at 25 (1934).

Section 60 of the Alabama Constitution states that “[n]o person convicted of embezzlement of the public money, bribery, perjury, or other infamous crime, shall be eligible to the legislature, or capable of holding any office of trust or profit in this state.” ALA. CONST. art. IV, § 60. Neither the Alabama courts nor the Alabama Legislature have specifically defined the term “infamous crimes” as used in section 43-2-22 of the Code and in section 60 of the Alabama Constitution. At common law, the definition of “infamous crimes” has changed over time and is largely determined on a case-by-case basis by the courts of this state.

In *State ex rel. Woods v. Thrower*, 272 Ala. 344, 131 So. 2d 420 (1961), the Alabama Supreme Court held that a conviction of federal income tax evasion on a plea of *nolo contendere* did not bar the defendant from holding city office under section 60 of the Alabama Constitution barring persons convicted of “infamous crimes” from holding office. The Court declined to address whether a conviction of federal tax evasion was an “infamous crime” in itself, but instead focused on the fact that a plea of “*nolo contendere*” is “not a plea of guilty but is in the nature of a tacit confession and is limited to the particular case and only that case.” *Woods*, 272 Ala. at 346, 131 So. 2d at 422. The Court stated that such a plea “cannot be used against the defendant as an admission in any civil suit for the same act,” which includes a *quo warranto* proceeding to force an official to vacate office. *Id.*

Later, in *Randolph County v. Thompson*, 502 So. 2d 357 (Ala. 1987), the Court held that a conviction of voting fraud was an infamous crime that disqualified a person from holding office as supernumerary sheriff, a pardon notwithstanding. See also, *James v. Thompson*, 392 So. 2d 1178 (Ala. 1981). In

1991, the Alabama Court of Civil Appeals held that a city councilman's conviction for assault and battery, which was classified as a misdemeanor at the time of the conviction, was not an infamous crime or one involving moral turpitude within the meaning of section 60 of the Alabama Constitution. *City of Brighton v. Taylor*, 594 So. 2d 135 (Ala. Civ. App. 1991). Most recently, the Alabama Court of Criminal Appeals has stated that "treason, felony, perjury, [and] conspiracy" are "infamous crimes." *Tomlin v. State*, 909 So. 2d 213, 236 (Ala. Crim. App. 2002) (citations omitted), *rev'd on other grounds by Ex parte Tomlin*, 909 So. 2d 283 (Ala. 2003).

Based on the decisions rendered by the courts of this state, infamous crimes under Alabama law, for purposes of section 43-2-22, include convictions for the crimes of treason, conspiracy, embezzlement of the public money, bribery, perjury, and voting fraud, as well as all other felonies.

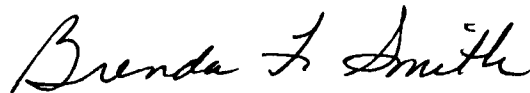
#### CONCLUSION

Infamous crimes under Alabama law for purposes of section 43-2-22 have been defined by the courts of this state to specifically include convictions of treason, conspiracy, embezzlement of the public money, bribery, perjury, and voting fraud, as well as all other felony convictions.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Pete Smyczek of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/PJS  
346266/115405